IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT

JODHPUR.

O R D E R

Rajasthan State Road Transport Corporation.	Versus	Shri Ajayab Singh & Anr.

S.B. Civil Writ Petition No. 544/2007

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Date of Order: May 18, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.Sangeet Lodha, for the petitioner.
Mr. G.J. Gupta, for the respondent No.1.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petition has challenged the Award Annx.4 dated 18-5-2004, as notified vide Notification dated 24.8.2004.

The facts and circumstances giving rise to the instant writ petition are that vide Annx.1 dated 14-8-2001, the respondent No.1 was found guilty of the charges and imposed certain penalties, like that he should be careful in future in not taking the passengers without tickets, Rs.11,000/- was imposed

as fine, stoppage of three annual grade increments with cumulative effect and forfeiture of the salary for the period during which the respondent No.1 remained under suspension. Apart from other conditions, the respondent No.1 was reinstated in service on the condition that any suit filed by him before any civil court against the petitioner has been withdrawn. Aggrieved with the penalties imposed, the respondent No.1 approached the Appropriate Government, i.e. the State Government raising industrial dispute and on this, a reference to the Labour Court was made by the State Government vide notification dated 7-1-2004, which was received by the Labour Court on 6-2-2004. The respondent No.1 filed Statement of Claim vide Annx.2 and a reply to the claim Annx.3 was filed by the petitioner. By the Award impugned dated 18-5-2004 (Annx.4), the Labour Court, while adjudicating the industrial dispute, held that the penalty of stoppage of three annual grade increments with cumulative effect and the recorded warning vide Annx.1 were justified and valid; however, the Labour Court interfered with the penalty of forfeiture of salary for the suspension period and the penalty of imposing fine of Rs.11,000/- and the penalties of imposing the fine of Rs.11,000/- and forfeiture of salary for the suspension period have been quashed and set aside. The Award Annx.4 came to be published by the Notification dated 24-8-2004. Aggrieved by the Award impugned dated 18-5-2004 (Annx.4)

and the notification dated 24-8-2004, the petitioner Rajasthan State Road Transport Corporation (for short, "the Corporation" hereinafter) filed the instant writ petition.

Respondent No.1 workman did not choose to file reply to the writ petition.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the conclusion arrived at by the Labour Court while interfering in the penalties of forfeiture of salary for the suspension period on the ground that the maximum period, for which a workman can be placed under suspension is ninety days and therefore the forfeiture of salary for the suspension period beyond the period of ninety days is erroneous, is wholly without the jurisdiction as it is beyond the terms of reference made to the Labour Court by the Government and, therefore, cannot sustain. So far as imposing of the penalty of fine of Rs.11,000/-, the Labour Court erred in coming to the conclusion that as per the Rules, only 2% of the annual salary can be imposed as penalty as per the Standing Order on this premise set aside the order Annx.1 so far as it relates to imposing the penalty of fine of Rs.11,000/- as a whole. It is contended by the learned counsel for the petitioner that the Labour Court, at the best, could have limited the amount of penalty of fine to 2% of the annual salary of the respondent No.1 and as such the

Labour Court fell in error in quashing the entire amount of penalty of fine. Learned counsel further submitted that firstly there was no terms of reference before the Labour Court to adjudicate as to whether the workman can be granted the salary of suspension period beyond ninety days or not, and what was required from the Labour Court was whether the forfeiture of salary of suspension period was valid or not, whereas the Labour Court went beyond the terms of the reference. It has further been contended that para 10 of the Circular Annx.5 dated 25-8-1975 provides that no employee shall be kept under suspension beyond a period of 90 days in case of departmental enquiry unless it was expedient in the over all interest of the Corporation and good discipline. Keeping an employee under suspension for more than 90 days in case of departmental enquiry, should be on sufficient reasons to be recorded in writing by the suspending authority. Thus, according to the learned counsel for the petitioner, the suspension of the respondent-workman beyond 90 days is permissible though by recording sufficient reasons. Learned counsel further submits that the respondent-workman filed the Statement of Claim (Annx.2) and therein he has not specifically pleaded that his suspension beyond the period of 90 days was beyond the scope of the Circular Annx.5. At any rate, since in the Statement of Claim, the respondent-workman has not pleaded that the suspension beyond the period of 90 days is

bad in law, therefore, the Corporation was under no obligation to controvert the same. Had there been a plea, the Corporation could have controverted the same with the aid of para 10 of the Circular Annx.5. On carefully going through the Statement of Claim, it is clear that the respondent-workman has not come with the specific case that his suspension beyond ninety days was bad in law or against the scope of the Circular Annx.5. Dated 25-8-1975.

So far as the penalty of imposing the fine of Rs.11,000/- is concerned, the Labour Court came to the conclusion that 2% of the annual salary can be imposed as the fine. In the instant case, instead of calculating the amount of fine to the extent of 2% of the annual salary of the respondent-workman, the Labour Court straightway quashed and set aside the entire amount of fine on the basis of the Standing Order 36 (4), though the Standing Order 36 (4) provides that the maximum fine can be imposed to the extent of 2% of the annual salary of the workman. Without calculating the amount of fine upto the extent of 2% of the annual salary of the respondent-workman, the Labour Court set aside the entire amount of fine. In the instant case, the Labour Court should have referred the matter to the petitioner for calculating the amount of fine to the extent of 2%, or the Labour Court itself could have calculated the amount of fine instead of setting aside the entire amount of

fine.

So far as forfeiture of salary of suspension period beyond ninety days is concerned, the Labour Court went beyond the terms of the reference. It was not for the Labour Court to adjudicate as to for what period or to what extent, a person can be placed under suspension since the Labour Court was called upon the decide as to whether the forfeiture of salary for the suspension period is valid or not. The Labour Court held that forfeiture of salary of the suspension period upto 90 days is valid and interfered with forfeiture of salary beyond 90 days of suspension period, which was beyond the terms of the reference. Therefore, keeping in view para 10 of the Circular Annx.5 and the fact that no such plea was taken in the Statement of Claim by the respondent-workman, in my view, the Labour Court fell in error in interfering with the penalty of forfeiture of entire amount of salary of the suspension period. Therefore, the writ petition deserves to be partly allowed.

In this view of the matter, the writ petition is partly allowed; the impugned Award Annx.4 dated 18-5-2004 and the Notification dated 24-8-2004, to the extent of setting aside the order Annx.1 dated 14-8-2001, regarding forfeiture of salary beyond the suspension period of 90 days as also setting aside the fine of Rs.11,000/-, is set aside and modified to the extent that the amount of fine is limited to 2% of the annual salary of

the respondent-workman, which shall be calculated by the concerned authority of the petitioner-Corporation and realised. The stay petition stands disposed of. There shall be no order as to cost.

(H.R. PANWAR), J.

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